

ORIGINAL

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN 15 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of) MM Docket 93-94
)
Scripps Howard) File No. BRCT-910603KX
Broadcasting Company)
)
For Renewal of License of)
Station WMAR-TV,)
Baltimore, Maryland)
)
and)
)
Four Jacks) File No. BPCT-910903KE
Broadcasting, Inc.)
)
For a Construction Permit for)
a New Television Facility on)
Channel 2 at Baltimore, Maryland)

To: The Honorable Richard L. Sippel
Presiding Administrative Law Judge

MOTION FOR CONTINUANCE OF HEARING

Scripps Howard Broadcasting Company ("Scripps Howard"), licensee of Station WMAR-TV, Baltimore, Maryland, and an applicant in the above-referenced proceeding, through counsel, hereby respectfully moves for a continuance of the October 13, 1993 hearing date set by the Presiding Judge's Order, FCC 93M-337, released June 7, 1993.

Leonard C. Greenebaum, the head of litigation in the Washington office of Baker & Hostetler and counsel for Scripps Howard in this matter, represents Van Dorn Retail Management, Inc., which is the plaintiff in two actions in the District Court for the City and County of Denver, State of Colorado. Those actions are entitled Van Dorn Retail Management, Inc. v. City and County of Denver, et al., case number 92-CV-5576 and Van Dorn

No. of Copies rec'd
List A B C D E

046

Retail Management, Inc. v. Wisa, Inc., et al., case number 92-CV-5049. See Affidavit of Michael G. Martin at ¶¶ 1 and 5, attached hereto as Exhibit 1.

The trial in Van Dorn Retail Management, Inc. v. City and County of Denver, et al. was originally scheduled to begin on June 14, 1993. Id. at ¶ 2. Due to scheduling conflicts involving out-of-state witnesses and "considerations relating to Mr. Greenebaum's trial calendar" (i.e., the anticipated need to prepare for the conduct of this hearing in September), on May 26, 1993 Michael G. Martin, counsel for Van Dorn Retail Management, Inc. in Denver, Colorado, contacted the clerk of the court and counsel for the other parties about rescheduling the trial. Id. at ¶¶ 2 and 3. The clerk of the court told Mr. Martin that October 12, 1993 was an available trial date. Id. at ¶ 2. On May 27, 1993, the parties agreed to stipulate to reschedule the trial from June 14, 1993 to October 12, 1993. Id. A Stipulated Motion to Reschedule Trial was filed with the court on June 1, 1993. Id. A copy of the Stipulated Motion to Reschedule Trial is attached as Exhibit A to Mr. Martin's Affidavit. On June 8, 1993 the court entered an order granting the Stipulated Motion to Reschedule Trial. See Exhibit B to Martin Affidavit.

Because the two Van Dorn Retail Management, Inc. actions are related, Mr. Martin has made arrangements to attempt to reschedule the trial in Van Dorn Retail Management, Inc. v. Wisa, Inc., et al., originally scheduled for four days beginning on July 5, 1993, to a date immediately following the conclusion of

the October 12, 1993 trial in Van Dorn Retail Management, Inc. v. City and County of Denver, et al.. Id. at ¶ 5.

The hearing in this proceeding was originally scheduled for September 8, 1993. See Hearing Designation Order, DA 93-340, released April 1, 1993. On June 3, 1993, a Prehearing Conference was held in this matter. At that conference, the Presiding Judge rescheduled the hearing to October 13, 1993. The Presiding Judge entered an order to this effect on June 7, 1993. See Order, FCC 93M-337, released June 7, 1993.

Due to the fact that Mr. Greenebaum will be conducting a trial in Denver, Colorado during the period October 12 through October 22, 1993, counsel for Scripps Howard respectfully requests that the October 13, 1993 hearing be rescheduled for a date during the week of October 25, 1993.

Respectfully submitted,

Scripps Howard
Broadcasting Company

By: 

Kenneth C. Howard, Jr.
~~Leonard C. Greenebaum~~

EXHIBIT 1

AFFIDAVIT OF MICHAEL G. MARTIN

The affiant, Michael G. Martin, first being duly sworn.

Further the affiant sayeth not.


Michael G. Martin

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

Subscribed and sworn to before me this 11th day of June, 1993
by Michael G. Martin.

Witness my hand and official seal.

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO
Civil Action No. 92 CV 5576 Courtroom 1

STIPULATED MOTION TO RESCHEDULE TRIAL

VAN DORN RETAIL MANAGEMENT, INC., a New York corporation,

Plaintiff,

v.

CITY & COUNTY OF DENVER, a municipal corporation; PATRICIA SCHWARTZBERG, Manager of Revenue, City and County of Denver; EXECUTIVE DIRECTOR OF COLORADO DEPARTMENT OF REVENUE; and STATE OF COLORADO,

Defendants.

The parties by their undersigned counsel submit the following Stipulated Motion to Reschedule Trial:

1. This matter is presently set for a four day jury trial commencing on June 14, 1993.

2. Plaintiff, Van Dorn Retail Management, Inc. ("Van Dorn") previously scheduled the preservation depositions of Irwin Peters, Ben Jones, Karl Goldenthal and Steven Levens, all of whom are out-of-state witnesses who cannot be subpoenaed to testify at trial. Defendants filed motions for protective orders, precluding plaintiff from taking these depositions as scheduled. Following a hearing on May 24, 1993 on the motion for protective order and plaintiff's opposition thereto, Magistrate Costello ordered that the depositions take place and that defendants appear by telephone.

3. Subsequently, plaintiff learned that these witnesses are currently unavailable to be deposed and will be unavailable to have their testimony taken throughout the first week of June. As a result, plaintiff will be unable to take these depositions prior to the June 1, 1993 discovery cut-off date set by the Court and it is unlikely that the depositions can be completed prior to the June 14, 1993 trial date.

3. Moreover, all parties have motions for summary judgment pending which may be dispositive of certain issues at trial. The Court's chambers has indicated the week of October 12, 1993 is presently available for the trial of this case. The parties believe that rescheduling the trial to that date would lead to the most efficient and expeditious resolution of the issues involved.

FORWARDED

WHEREFORE, the parties pray that this Court enter an Order rescheduling the trial, which is presently to commence on June 14, 1993, to October 12, 1993.

Respectfully submitted this 14 day of June, 1993.

BAKER & HOSTETLER

By: 

Michael G. Martin, #14204
303 E. 17th Avenue, Suite 1100
Denver, Colorado 80203
(303) 861-0600

Of counsel:

Leonard C. Greenebaum
Shelby F. Mitchell
Baker & Hostetler
1030 Connecticut Ave., N.W.
Washington, D.C. 20036-5304
(202) 861-1500

CITY AND COUNTY OF DENVER

By: 

Maria Kayser, #15597
Department of Law
1445 Cleveland Place
Room 300
Denver, Colorado 80202-5306

OFFICE OF THE ATTORNEY GENERAL

By: 

Robert Ripple, #6053
1525 Sherman Street
5th Floor
Denver, Colorado 80203-1760

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO
Civil Action No. 92 CV 5576 Courtroom 1

ORDER

VAN DORN RETAIL MANAGEMENT, INC., a New York corporation,

Plaintiff,

v.

CITY & COUNTY OF DENVER, a municipal corporation; PATRICIA
SCHWARTZBERG, Manager of Revenue, City and County of Denver;
EXECUTIVE DIRECTOR OF COLORADO DEPARTMENT OF REVENUE; and STATE OF
COLORADO,

Defendants.

THIS MATTER having come before the court on the parties
Stipulated Motion to Reschedule Trial:

IT IS ORDERED that the four day jury trial which is presently
to commence on June 14, 1993, is rescheduled to commence on October
12, 1993.

By the Court:

District Court Judge

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO
Civil Action No. 92 CV 5576 Courtroom 1

ORDER

Certificate of Service

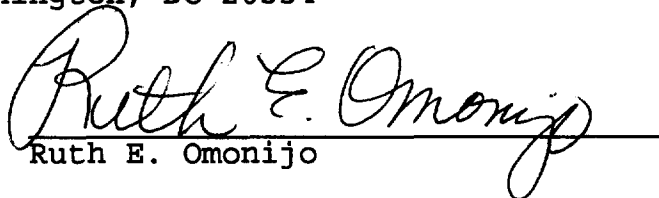
I, Ruth E. Omonijo, a secretary in the law offices of Baker & Hostetler, here certify that I have caused copies of the foregoing "Motion for Continuance of Hearing" to be sent via First Class United States Mail this 15th day of June, 1993, to the following:

The Honorable Richard L. Sippel*
Presiding Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 214
Washington, DC 20554

Martin R. Leader, Esq.
Fisher Wayland Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, DC 20037
Counsel to Four Jacks
Broadcasting, Inc.

Norman Goldstein, Esq.*
Hearing Branch-Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 7212
Washington, DC 20554

Robert Zauner, Esq.*
Hearing Branch-Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 7212
Washington, DC 20554


Ruth E. Omonijo

* By Hand Delivery